

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HM 883  
**SPONSOR(S):** Stargel  
**TIED BILLS:**

Federal Excise Tax on Telecommunications

**IDEN./SIM. BILLS:** SM 1240

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<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
1) Utilities & Telecommunications Committee	13 Y, 0 N	Cater	Holt
2) Rules & Calendar Council			
3) Commerce Council			
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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**SUMMARY ANALYSIS**

This memorial requests that the United States Congress support a repeal of the three percent federal excise tax on telecommunications. This tax was originally enacted to fund the Spanish-American War, and was repealed and reenacted multiple times to finance wars and other fiscal crises. While the tax has existed continuously since 1941, it was made permanent in 1990. However, the substance of the tax law has not changed since 1965, causing some items within the scope of telecommunications service to either be nontaxable, or to be unevenly taxed.

This memorial and the repeal of the excise tax appears to have no fiscal impact on the State of Florida.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. HOUSE PRINCIPLES ANALYSIS:

**Ensure Lower Taxes**-This memorial requests that Congress repeal the federal excise tax on telecommunications.

### B. EFFECT OF PROPOSED CHANGES:

#### Background

The federal government imposes a three percent excise tax on communications services defined as “local telephone service”, “toll telephone service” and “teletypewriter exchange service.” The end-use customer is responsible for paying the tax, with the service provider acting as a collection agent for the Internal Revenue Service (IRS). The history of this tax is as follows:<sup>1</sup>

1898	Enacted to finance the Spanish American War-Applied to long-distance service
1902	Tax Repealed
World War I	Tax Re-enacted-Applied to long-distance service
1924	Tax Repealed
1932	Tax Re-enacted
1941	Tax extended to local service
1965	Scheduled phase out and repeal
1966	Scheduled reductions were repealed
1968	Phase-out effective in 1970 enacted (later postponed)
1973	Phase-out to be complete in 1982 goes into effect
1980	Phase-out delayed by 1-year
1981	Repeal further delayed; Rate increased from 1 percent to 3 percent
1990	Revenue Reconciliation Act makes a 3 percent rate permanent
2000	President Clinton vetoes legislation repealing the tax <sup>2</sup>

Over the years, the tax rate has varied. From 1944 until 1954, the rate reached its peak of 10 percent on local service and 25 percent on some toll calls. When the 1965 phase-out began, the rate was 10 percent. In the early 1980s, the rate got as low as one percent, and has been at three percent since 1983.<sup>3</sup>

In 1987, the Treasury Department recommended that the tax expire; however, because of budget deficits, the tax was made permanent in 1990.<sup>4</sup> In general, excise taxes can impact consumer decisions, and the taxes on new services or technologies can make them more expensive and slow innovation.<sup>5</sup>

The last time that any significant revisions were made to the tax law was in 1965, and due to changing technologies, the rules now “fail to capture many services that were seen as within the scope of the

<sup>1</sup> United States Congress; *Options to Improve Tax Compliance and Reform Tax Expenditures*; Prepared by the Staff of the Joint Committee on Taxation, January 27, 2005, p.368-378.

<sup>2</sup> Americans for Tax Reform, “Sen. Rick Santorum (R-PA) Introduces Bill to Repeal Spanish-American War Tax” June 29, 2005.

<sup>3</sup> United States Congress; *Options to Improve Tax Compliance and Reform Tax Expenditures*; Prepared by the Staff of the Joint Committee on Taxation, January 27, 2005, p.371.

<sup>4</sup> *Id.*, at p.376.; The Tax Foundation; *Taxing Talk: The Telephone Excise Tax and Universal Service Fees*. March 1, 2000.

<sup>5</sup> United States Congress; *Options to Improve Tax Compliance and Reform Tax Expenditures*; Prepared by the Staff of the Joint Committee on Taxation, January 27, 2005, p. 376.

communications tax or they capture those services unevenly.”<sup>6</sup> If fact, three federal appeals courts have determined that since the definition of “toll telephone service” is service where the charge varies “with the distance and elapsed transmission time,” a service that charges just based on transmission time, but not distance, is not a “toll telephone service” for purposes of the excise tax.<sup>7</sup> However, the IRS has instructed telephone companies to continue collecting the tax.<sup>8</sup>

While the excise tax was originally enacted to pay for wars and other revenue crises, the revenue received from the tax is currently going into the federal government’s general fund.<sup>9</sup> It is estimated that the federal government collected about \$5.8 billion in 2003 from this tax.<sup>10</sup>

There are currently bills in the United States House of Representatives<sup>11</sup> and United States Senate<sup>12</sup> to repeal this tax.

### **Proposed Memorial**

This memorial requests that the Congress of the United States support a repeal of the federal excise tax on telecommunications.

This memorial also provides that copies be sent to the following persons:

- President of the United States
- President of the United States Senate
- Speaker of the United States House of Representatives
- Each member of the Florida delegation to the United States Congress

#### C. SECTION DIRECTORY:

The memorial format does not contain sections.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

None. According to the Department of Revenue, for purposes of the Communications Services Tax (CST), federal taxes are excluded from the taxable sales price.

##### 2. Expenditures:

None. State governments are exempt from paying this tax.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

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<sup>6</sup> *Id.*

<sup>7</sup> *Office Max Inc. v. United States*, 428 F.3d 583 (6<sup>th</sup> Cir. 2005). See also, *American Bankers Insurance Group v. United States*, 408 F.3d 1328 (11<sup>th</sup> Cir. 2005), and *National Railroad Passenger Corporation v. United States*, 431 F.3d 374 (D.C. Cir. 2005).

<sup>8</sup> “Courts Erode Case for Excise Tax”; *The Washington Times*; February 20, 2006.

<sup>9</sup> Speech of the Honorable Gary G. Miller of California in the House of Representatives, Wednesday, April, 27, 2005.

<sup>10</sup> United States Congress; *Options to Improve Tax Compliance and Reform Tax Expenditures*; Prepared by the Staff of the Joint Committee on Taxation, January 27, 2005, p. 376.

<sup>11</sup> HR 1898, Sponsored by Representative Gary Miller of California, Introduced April 27, 2005.

<sup>12</sup> S. 1321, Sponsored by Senator Rick Santorum of Pennsylvania, Introduced June 28, 2005.

None. According to the Department of Revenue, for purposes of the CST, federal taxes are excluded from the taxable sales price.

2. Expenditures:

None. Local governments are exempt from paying this tax.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The memorial requests that the federal government repeal its excise tax on telecommunications. If the tax is repealed, the private sector would have lower telephone bills.

D. FISCAL COMMENTS:

None

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This memorial does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES